



Federal Communications Commission
Enforcement Bureau
Investigations and Hearings Division
445 12th Street, SW, Suite 4-C330
Washington, D.C. 20554

May 23, 2013

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED
AND E-MAIL (hirsch@birns.net)

Mr. Hirsch Birnbaum
Vice President
Birns Telecommunications Inc.
927 McDonald Avenue
Brooklyn, NY 11218

Re: Birns Telecommunications Inc., File No. EB-13-IH-0907

Dear Mr. Birnbaum:

The schools and libraries universal service support mechanism of the federal universal service fund (commonly referred to as the "E-rate program") enables eligible schools, libraries, and consortia that include eligible schools and libraries, to receive discounts on telecommunications services, Internet access, internal connections and basic maintenance costs. The E-rate program is administered by the Universal Service Administrative Company (USAC) under Commission oversight. Relevant provisions of the Communications Act of 1934, as amended (the "Act"), along with the Commission's rules (Rules) governing the E-rate program, require that schools, libraries, and consortia meet certain requirements in order to obtain funding under the program. These provisions include, but are not limited to, Section 254(h) of the Act, 47 U.S.C. § 254(h), and Sections 54.500-54.523, and 54.8 of the Rules, 47 C.F.R. §§ 54.500-54.523 and 54.847 C.F.R. §§ 54.500-54.523 and 54.8.

Recently, a series of news stories ran in The New York Jewish Week alleging that a number of Orthodox Jewish schools in New York State have received and spent large sums of E-Rate funding despite "publicly eschewing Internet use and despite offering their students minimal, if any, access to computers" See <http://www.thejewishweek.com/news/national-news/internet-averse-haredi-schools-reaping-millions-federal-tech-funds>; <http://www.thejewishweek.com/news/national-news/how-do-haredi-schools-get-all-e-rate-money>; <http://www.thejewishweek.com/news/national-news/e-rate-program-dogged-concerns-about-oversight>.

The Enforcement Bureau is investigating whether Birns Telecommunications Inc. (the Company) may have violated Section 254(h) of the Act and Sections 54.500-54.523, and 54.8 of the Rules in connection with services provided to various schools in New York State under the E-Rate Program. We direct the Company, pursuant to Sections 4(i),

4(j), 218, and 403 of the Act to provide certain information and documents, as defined herein, within thirty (30) calendar days from the date of this letter. The instructions for responding to this letter and the definitions for certain terms used in this letter are contained in the Attachment.

Unless otherwise indicated, the period of time covered by these inquiries is January 1, 2008 to the present. This investigation may also address periods subsequent to the date of this Letter and may, at the Enforcement Bureau's discretion, be expanded to include matters in addition to those addressed in this Letter.

Documents and Information to be Provided

1. Identify the State in which the Company is incorporated and provide a copy of the Company's certificate of incorporation and a current certificate of good standing in such State.
2. Identify the States in which the Company is authorized to do business, and indicate whether it is still operational and in good standing in such States.
3. Identify the Company's officers and directors and the positions that they held, respectively, for each year from 2008 to the present.
4. Provide an organizational chart that indicates all entities that are in the same corporate structure as the Company, all entities in which the Company has an ownership interest, and all entities or individuals that have an ownership interest in the Company. For each entity on the chart, identify:
 - a) Its relationship with the Company (e.g., parent, subsidiary, affiliate, sister corporation);
 - b) The type(s) of Telecommunications or Telecommunications Services, if any, it provides, along with a description of the manner in which the Company provides such services;
 - c) The date on which Telecommunications Services were first provided;
 - d) All entities and individuals that have an ownership interest in it; and
 - e) The dates of any ownership changes.
5. Explain the types of services the Company provides. Specifically:

- a) Outline the Company's business model;
 - b) State how long the Company has been in business;
 - c) Describe the types of entities the Company serves (the E-Rate customers), the types of services provided to the Company's E-Rate customers, and identify all States in which the Company's E-Rate customers are located;
 - d) Explain the Company's involvement in the E-Rate Program;
 - e) Provide the date the Company first became involved with the E-Rate Program;
 - f) Provide the Company's pricing for each of the services that the Company offers to E-Rate applicants;
 - g) Provide the Company's pricing for each of the services that the Company offers to non-E-Rate applicants; and
 - h) Provide the names and titles of any employees, contractors or agents that work on E-Rate related issues on behalf of the Company.
6. Identify all schools and libraries in New York State to which the Company provides or has provided E-Rate related services. Specifically, provide the date the Company began working with each such school or library, the nature of the relationship, the date the relationship terminated or if the relationship is still ongoing.
7. For each school and/or library listed in response to question number 6, above, state whether the Company had any communications with the applicants before the applicants posted their Form 470s. If so, describe these communications and provide copies of any such written or electronic communications.
8. For each school and/or library listed in response to question number 6, above, state whether the Company had any communications with the applicants during the bidding process. If so, describe these communications and provide copies of any such written or electronic communications.
9. For each school and/or library listed in response to question number 6, above, provide the E-Rate supported services the Company provided and the cost of such services. This information should be organized by year and to the extent

possible, this data should be itemized. In addition, provide a breakdown of the costs for recurring monthly costs and installation,

10. For each school and/or library listed in response to question number 6, above, provide the amount of E-Rate support the Company received from USAC for providing services to each such school or library. This information should be organized by year and, to the extent possible, this data should be itemized.
11. For each school and/or library listed in response to question number 6, above, state whether the Company provides or has provided any non-E-Rate related services, and if so, specify the services provided.
12. Provide the amount of the non-discounted share of the E-Rate supported services the Company received from each school and/or library listed in response to question number 6, above. This information should be organized by year and, to the extent possible, this data should be itemized.
13. For each school and/or library listed in response to question number 6, above, and for each year the Company provided the E-rate supported service, provide the name of any school or library that failed to submit the non-discounted share of the E-Rate supported services to the Company, along with the amount of money owed to the Company.
14. For each school and/or library listed in response to question number 6, above, explain how the Company and the school and/or library used the funding received from USAC. Provide supporting documentation for these expenditures.
15. For each school and/or library listed in response to question number 6, above, state whether the Company provides or has provided paging services or cell phone service (including but not limited to services for smart phones, iPhones, BlackBerry devices, etc.). Specifically, for each such school, identify the number of each type of device provided by the Company and the amount received from USAC to pay for such services.
16. Describe any E-Rate related litigation the Company is involved in and provide all supporting documentation and the status of such litigation.
17. State whether the Company has policies and procedures in place to refund money to USAC if a school or library is not spending its E-Rate funding for the purpose(s) stated in its application.
18. State whether the Company has policies and procedures in place to ensure that USAC is being invoiced for E-Rate supported services, and if so, describe such policies and procedures and provide documents sufficient to explain such

policies and procedures. If the Company does not have policies and procedures in place to ensure that USAC is being invoiced for E-Rate supported services, please explain why not.

19. State whether the Company has policies and procedures in place to ensure that the services it provides are being used by the applicant, and if so, describe such policies and procedures and provide documents sufficient to explain such policies and procedures. If the Company does not have policies and procedures in place to ensure that the services it provides are being used by the applicant, please explain why not.
20. For each school and/or library listed in response to question number 6, above, state whether the Company submitted a revised claim for reimbursement of E-Rate funding to USAC. For each such instance:
 - a) Identify the account information (including school and/or library name and address);
 - b) Identify the amount of funds, if any, USAC disbursed for that school and/or library;
 - c) Identify the amount of E-Rate funds, the school and/or library sought to reimburse; and
 - d) The date each revised claim was filed.
21. Identify what procedures, if any, are in place for the Company to return unused equipment and/or E-Rate funds. Specifically, provide a detailed list of any refunds made by or on behalf of any of the schools and/or libraries listed in response to question number 6, above.
22. Provide any information you have demonstrating the use of Internet access services by each recipient of E-Rate funds with which you have a contract. To the extent possible, provide information showing the amount of bandwidth used on a monthly basis by each such recipient of E-Rate funds.
23. Provide copies of any and all FCC Forms 473 and 474 filed with USAC by or on behalf of the schools and/or libraries listed in response to question number 6, above.
24. Please address any aspects of the news stories that ran in *The New York Jewish Week* alleging that a number of Orthodox Jewish schools in New York State have received and spent large sums of E-Rate funding despite “publicly eschewing Internet use and despite offering their students minimal, if any,

access to computers ... ” that you believe are inaccurate. *See* <http://www.thejewishweek.com/news/national-news/internet-averse-haredi-schools-reaping-millions-federal-tech-funds>; <http://www.thejewishweek.com/news/national-news/how-do-haredi-schools-get-all-e-rate-money>; <http://www.thejewishweek.com/news/national-news/e-rate-program-dogged-concerns-about-oversight>. Provide documentation to support your position.

25. Provide copies of any and all documents used to prepare or that otherwise relate to the Company's responses to inquiries 1-24, above. To the extent there are multiple versions of any such documents, provide copies of each such version and identify the dates (beginning and ending) that each such version was utilized.

Filing Requirements

We direct the Company to support its responses with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of the Company with personal knowledge of the representations provided in the Company's response, verifying the truth and accuracy of the information therein and that all of the information and/or documents requested by this letter which are in the Company's possession, custody, control, or knowledge have been produced. If multiple Company employees contribute to the response, in addition to such general affidavit or declaration of the authorized officer of the Company noted above, if such officer (or any other affiant or declarant) is relying on the personal knowledge of any other individual, rather than his or her own knowledge, provide separate affidavits or declarations of each such individual with personal knowledge that identify clearly to which responses the affiant or declarant with such personal knowledge is attesting. All such declarations provided must comply with Section 1.16 of the Commission's Rules¹ and be substantially in the form set forth therein.

To knowingly and willfully make any false statement or conceal any material fact in reply to this inquiry is punishable by fine or imprisonment.² Failure to respond appropriately to this letter of inquiry may constitute a violation of the Act or the Commission's Rules.³

¹ 47 C.F.R. § 1.16.

² *See* 18 U.S.C. § 1001; *see also* 47 C.F.R. § 1.17.

³ *See SBC Communications, Inc.*, Order of Forfeiture, 17 FCC Rcd 7589 (2002); *Globcom Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, n. 36 (2003); *World Communications Satellite Systems, Inc.*, Forfeiture Order, 19 FCC Rcd 2718 (Enf. Bur. 2004); *Donald W. Kaminski, Jr.*, Order of Forfeiture, 18 FCC Rcd 26065 (Enf. Bur. 2003).

Mr. Hirsch Birnbaum
Birns Telecommunications Inc.
May 23, 2013
Page 7 of 10

The Company shall direct its response, if sent by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, D.C. 20554, to the attention of Pam Slipakoff, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-C330, Washington, D.C. 20554, with a copy to Theresa Z. Cavanaugh, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-C330, Washington, D.C. 20554. All messenger or hand-delivery filings must be submitted without envelopes.⁴ If sent by commercial overnight mail (other than U.S. Postal Service (USPS) Express Mail and Priority Mail), the response must be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by USPS first-class, Express, or Priority mail, the response must be addressed to Pam Slipakoff, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington, D.C. 20554. The Company shall also transmit a copy of the response via email to Pam.Slipakoff@fcc.gov, Pamela.Kane@fcc.gov and Terry.Cavanaugh@fcc.gov.

Direct any questions regarding this investigation to Pam Slipakoff at 202-418-7705.

Sincerely,



Pamela S. Kane
Deputy Chief
Investigations and Hearings Division
Enforcement Bureau

Attachment

⁴ See *FCC Announces Change in Filing Location for Paper Documents*, Public Notice, 24 FCC Rcd 14312 (2009) for further filing instructions.

Attachment

Instructions

Request for Confidential Treatment. If the Company requests that any information or documents responsive to this letter be treated in a confidential manner, it shall submit, along with all responsive information and documents, a statement in accordance with Section 0.459 of the Rules. 47 C.F.R. § 0.459. Requests for confidential treatment must comply with the requirements of Section 0.459, including the standards of specificity mandated by Section 0.459(b). Accordingly, "blanket" requests for confidentiality of a large set of Documents are unacceptable. Likewise, casual requests, including simply stamping pages "confidential," are unacceptable. Pursuant to Section 0.459(c), the Bureau will not consider requests that do not comply with the requirements of Section 0.459.

Claims of Privilege. If the Company withholds any information or documents under claim of privilege, it shall submit, together with any claim of privilege, a schedule of the items withheld that states, individually as to each such item: the numbered inquiry to which each item responds and the type, title, specific subject matter, and date of the item; the names, addresses, positions, and organizations of all authors and recipients of the item; and the specific ground(s) for claiming that the item is privileged.

Method of Producing Documents. Each requested document, as defined herein, shall be submitted in its entirety, even if only a portion of that Document is responsive to an inquiry made herein. This means that the document shall not be edited, cut, or expunged, and shall include all appendices, tables, or other attachments, and all other documents referred to in the document or attachments. All written materials necessary to understand any document responsive to these inquiries must also be submitted.

Identification of Documents. For each document or statement submitted in response to the inquiries below, indicate, by number, the inquiry to which it is responsive and identify the person(s) from whose files the document was retrieved. If any document is not dated, state the date on which it was prepared. If any document does not identify its author(s) or recipient(s), state, if known, the name(s) of the author(s) or recipient(s). The Company must identify with reasonable specificity all documents provided in response to these inquiries.

Documents No Longer Available. If a document responsive to any inquiry made herein existed but is no longer available, or if the Company is unable for any reason to produce a document responsive to any inquiry, identify each such document by author, recipient, date, title, and specific subject matter, and explain fully why the document is no longer available or why the Company is otherwise unable to produce it.

Retention of Original Documents. With respect only to documents responsive to the specific inquiries made herein and any other documents relevant to those inquiries, the Company is directed to retain the originals of those documents for twelve (12) months from the date of this letter unless (a) the Company is directed or informed by the Enforcement Bureau in writing to retain such documents for some other period of time, or (b) the Enforcement Bureau or the Commission releases an item on the subject of this investigation, including, but not limited to, a Notice of Apparent Liability for Forfeiture or an order disposing of the issues in the investigation, in which case, the Company must retain all such documents until the matter has been finally concluded by payment of any monetary penalty, satisfaction of all conditions, expiration of all possible appeals, conclusion of any collection action brought by the United States Department of Justice, or execution and implementation of a final settlement with the Commission or the Enforcement Bureau.

Continuing Nature of Inquiries. The specific inquiries made herein are continuing in nature. The Company is required to produce in the future any and all documents and information that are responsive to the inquiries made herein but not initially produced at the time, date, and place specified herein. In this regard, the Company must supplement its responses (a) if the Company learns that, in some material respect, the documents and information initially disclosed were incomplete or incorrect, or (b) if additional responsive documents or information are acquired by or become known to the Company after the initial production. The requirement to update the record will continue for twelve (12) months from the date of this letter unless (a) the Company is directed or informed by the Enforcement Bureau in writing that the Company's obligation to update the record will continue for some shorter or longer period of time, or (b) the Enforcement Bureau or the Commission releases an item on the subject of this investigation, including, but not limited to, a Notice of Apparent Liability for Forfeiture or an order disposing of the issues in the investigation, in which case the obligation to update the record will continue until the release of such item.

Definitions

For purposes of this letter, the following definitions apply:

"Any" shall be construed to include the word "all," and the word "all" shall be construed to include the word "any." Additionally, the word "or" shall be construed to include the word "and," and the word "and" shall be construed to include the word "or." The word "each" shall be construed to include the word "every," and the word "every" shall be construed to include the word "each."

"Company" shall mean Birns Telecommunications Inc., and any predecessor-in-interest, affiliate, parent company, wholly or partially owned subsidiary, other affiliated company or business, and all owners, including but not limited to, partners or principals, and all directors, officers, employees, or agents, including consultants and any other

persons working for or on behalf of the foregoing at any time during the period covered by this letter.

“Document” shall mean the complete original (or in lieu thereof, exact copies of the original) and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any taped, recorded, transcribed, written, typed, printed, filmed, punched, computer-stored, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated, or made.

“E-Rate” or “E-Rate Program” shall mean the Schools and Libraries Universal Service Support Mechanism of the Universal Service Fund as established in Sections 54.500-54.523 of the Commission’s Rules.

“Identify,” when used with reference to a person or persons, shall mean to state his/her full legal name, job title (if any), current business address, and business phone number. State the person’s home address and/or telephone number if the business address and/or telephone number is not available.

“Identify,” when used with reference to a document, shall mean to state the date, author, addressee, type of document (e.g., the types of document, as described above), a brief description of the subject matter, its present or last known location, and its custodian.

“Identify,” when used with reference to an entity other than a person, shall mean to state its name, current or last known business address, and current or last known business telephone number.

“Rules” means the Commission’s regulations found in Title 47 of the Federal Regulations.

“Schools and Libraries” shall mean any schools, libraries or consortia that participate in the E-Rate Program.

“Telecommunications” or “Telecommunications Service” includes, but is not limited to, each type of interstate telecommunications listed in Section 54.706 of the Rules. *See* 47 C.F.R. § 54.706(a); *see also* 47 U.S.C. §§ 153(43), 153(46), and 254(d).

“USAC” shall mean the Universal Service Administrative Company.